



## INTERIOR BOARD OF INDIAN APPEALS

Richard and Julie Fowler v. Acting Portland Area Director, Bureau of Indian Affairs

26 IBIA 157 (08/03/1994)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

RICHARD AND JULIE FOWLER,	:	Order Docketing and Dismissing Appeal
Appellants	:	
	:	
v.	:	
	:	Docket No. IBIA 94-85-A
ACTING PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 3, 1994

This is an appeal from a February 16, 1994, decision of the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to approve leases of trust land on the Umatilla Reservation.

Appellants' notice of appeal did not show that they had served copies on the landowners, even though the Area Director had advised them that the landowners were interested parties and had attached a list of the landowners' names and addresses to his decision. The Board therefore ordered appellants to serve the landowners on or before May 13, 1994, and to certify to the Board that they had done so. The Board offered appellants the option of not serving copies of the bulky attachments to their notice of appeal on the landowners, provided they informed the Board that they did not intend to serve them, so that the Board could return the original attachments to them. 1/

The Board heard nothing from appellants. On May 31, 1994, the Area Director filed a motion to dismiss this appeal. The Area Director submitted documents tending to show that appellants had served at least some of the landowners with copies of their October 25, 1993, notice of appeal to the Area Director but that they had not served those same landowners with copies of their notice of appeal to the Board or copies of the attachments to their notice of appeal to the Board.

Following receipt of the Area Director's motion, the Board issued an order stating:

Although the Board believes its order was clear, it is possible that appellants misunderstood it with respect to which notice of appeal they were required to serve on the parties. The

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1/ Just as the Board cannot consider filings which have not been served on the interested parties, it cannot consider attachments, if those attachments have not been served on the parties.

Board can conceive of no explanation, however, for their failure to certify to the Board that they had served the parties and their failure to inform the Board that they did not intend to serve copies of the attachments to their notice of appeal. [Emphasis in original. ]

The Board gave appellants until July 8, 1994, to show why the appeal should not be dismissed for failure to prosecute. The Board stated that,

[i]n order to make such a showing, appellants must (1) give a rational explanation for their failure to follow the instructions in the Board's April 12 order, and (2) take the steps required by the Board's April 12 order--that is, they must (a) serve copies of their notice of appeal to the Board on all interested parties, (b) certify to the Board that they have done so, and (c) either serve copies of the attachments to their notice of appeal on the parties and certify to the Board that they have done so or inform the Board that they do not intend to serve the attachments. [Emphasis in original.]

Appellants have not responded to the Board's order.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed under the case number shown above, but is dismissed for failure to prosecute.

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Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge